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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO. 818 OF 2017
IN
APPEAL (L) NO. 139 OF 2017
IN
SUIT NO. 2582 OF 2010**

Nazo Developers Pvt. Ltd.

... Applicant /
Appellant

V/s.

Pushpa N. Ashar & 22 Ors.

... Respondents

Mr. R.D. Soni, i/b. Mr. Pankaj N. Mehta for Applicant / Appellant in
Notice of Motion No. 818 of 2017 and Appeal No. 139 of 2017.
Mr. Atul Damle, Senior Counsel with Mr. Dhaval Patil, i/b. M/s. K.
Ashar & Co. for Respondent No.1 in both Appeals.

**CORAM: B.R. GAVAI, &
RIYAZ I. CHAGLA, JJ.**
DATE: 6TH DECEMBER, 2018.

PC:-

1. By way of present Notice of Motion, the Applicant who is the original Defendant No.2 is seeking condonation of delay in filing an Appeal against an order of the learned Single Judge dated 12th October, 2012.
2. For delay of 1636 days, the contention raised in support of the Notice of Motion is that the learned Single Judge had never framed a separate issue with regard to the jurisdiction under Section 9A. The Applicant was not aware of the order passed by the learned Single Judge dated 12th October, 2012. It is submitted

that only recently when the Applicant went through the draft issue, he learnt that the issue of limitation was raised and already answered by the impugned order dated 12th October, 2012.

2. The Suit is filed in 2010. Undisputedly, the Suit summons were served on all Defendants including the present applicant. The perusal of impugned order reveal that the order has been passed by the learned Single Judge after hearing the counsel for Defendant No.1 and counsel for Defendant Nos. 4 to 20.

3. In that view of the matter, it cannot be accepted that though the Applicant was defending his case diligently he was not aware of the order passed by the learned Single Judge. We find that no sufficient case is made out in the Notice of Motion, hence Notice of Motion is rejected.

4. In view of the dismissal of the Notice of Motion, Appeal does not survive.

(RIYAZ I. CHAGLA J.)

(B.R. GAVAI,J.)